IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 1352 of 2001

(Old No. 223 of 1987)

The State of U.P. .....Appellant

Vs.

1- Ali Mohd. s/o Lal Mohd.
2- Smt. Sarifan w/o Lal Mohd.
3- Km. Sahjadi, d/o Lal Mohd.
All residents of Mohalla Basporan, P.S. Kashipur, District Nainital (now Udham Singh Nagar) ...Respondents

Learned A.G.A. for the appellant/State.
Sri I. S. Mehra (Amicus Curiae) for the respondents.

Dated: November 19, 2007

Hon'ble B. C. Kandpal, J.

This appeal has been preferred by the State against the judgment and order dated 14.10.1986 passed by II Additional Sessions Judge, Nainital, in Sessions Trial No. 114 of 1985, thereby acquitting the accused/respondents of the offences punishable under Sections 454 and 307/ of I.P.C.

Briefly stated the prosecution case is that one Mohd. Ismail filed a written report at Police Station Kashipur, Nainital on 12.9.1984 to the effect that on 12.9.84 at about 9.15 A.M. the maternal aunt of the informant, Smt. Tasliman went to her house situated in Mohalla Basporan to collect the rent from the tenant of her house. One Ali Mohammad who is married to the daughter of his maternal aunt and Smt. Talisman visited the place and went back and after some time Ali Mohd., Lal Mohd., Smt. Sharifan and Km, Shahjadi appeared at the scene and started altercation with Smt. Tasliman. They

were forcing Smt. Tasliman to part with her house and on refusal accused persons started *marpeet* with Smt. Tasliman. Ali Mohd. inflicted knife injuries on the person of Smt. Tasliman, whereas Lal Mohd. started *marpeet* with kicks and fists. A report was lodged in this regard. After investigation, the Investigation Officer recorded the statements of witnesses, prepared site plan, took samples of blood stained and simple earth, prepared Fard for the same, also took the blood stained clothes of injured Smt. Tasliman and submitted charge sheet against the above mentioned four accused persons.

This case was primarily taken up by the C.J.M. Nainital, who committed the same to the sessions for trial. On transfer from the court of Sessions Judge, this case was received by the court of II Addl. Sessions Judge, Nainital. Accused persons, namely, Ali Mohd., Lal Mohd., Smt. Sharifan and Km. Shahjadi were charged for the offences punishable under Sections 454 and 307/34 of I.P.C.

Accused persons denied the charge and claimed to be tried.

The prosecution in support of its case examined PW-1, Mohd. Ismail, PW-2, Dr. D.K. Agrawal, Medical Officer, L. D. Bhatt Civil Hospital, Kashipur, PW-3, Smt. Tasliman, Pw-4 Shahir Hussain and PW-5, S.I. Ram Saran Lal Sharma. Statements of the accused persons were recorded under section 313 Cr.P.C. From the defence side one paper i.e. medical injury report of Ali Mohd. dated 12.9.1984 was filed per list Ext. Kha. 1 and

Ex. Kha. 2, a copy of judgment was also filed by the accused persons in support of their claim.

The trial court after hearing learned counsel for the parties and having perused the entire evidence available on record, acquitted the accused/respondents from the charges levelled against them under Sections 454 and 307/34 of I.P.C. vide judgment and order dated 14.10.1986.

Feeling aggrieved by the aforesaid judgment and order, the appellant/State has preferred this appeal before this Court.

Heard learned counsel for the parties and perused the record.

At the outset, it is to be stated that there are contradictions in the statements of the prosecution witnesses with regard to material facts of the case. According to PW-1, Mohd. Ismail, the occurrence was witnesses by him as well as by Channu, Abdul Shakoor and Shahir Hussain. In his cross-examination, this witness has admitted that at the roof where Smt. Tasliman was being beaten by the accused persons, only he was present and none was present there. This statement in his cross-examination render his whole statement unreliable. PW-3, Smt. Tasliman has given eye account of the *Marpeet.* She is the witness who received injuries on her person at the hands of accused persons. She has given eye witness account of the whole occurrence and has stated that on her alarm, witnesses Ismail, Channu, Abdul Shakoor reached on the spot. Shahir Hussain witness was already present on the spot. In her statement, Smt.

Tasliman, admitted that she was first attacked by the accused persons near the *Charpai* and Ali Mohammad inflicted knife injuries on her person whereas Lal Mohammad beat her by kicks and fists. Shahir Hussain (PW-4) does not mention that accused persons inflicted any injuries on the person of Smt. Tasliman near the *Charpai,* but he has narrated that whole *marpeet* took place at the roof. These are the contradictions which really shatters the prosecution case specially when there is a positive evidence on record that accused Ali Mohammad also received injuries during the alleged *Marpeet* and specially when no explanation is given by the prosecution regarding the injuries received on the person of accused Ali Mohammad. The accused/respondents have rightly been extended benefit of doubt in view of shaky and unreliable evidence of the prosecution.

Having considered the arguments advanced by learned counsel for the parties, I do not find any illegality and impropriety in the finding recorded by the learned Magistrate while acquitting the accused/respondents from the charges levelled against him.

I find no substance in the appeal filed by the State and the same is liable to be dismissed.

The appeal is accordingly dismissed. The impugned judgment and order dated 14.10.1986 passed by II Additional Sessions Judge, Nainital, is hereby confirmed.

(B.C. Kandpal, J.)

SP